IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7041 OF 2005

M/s. Arihant Sale Corporation & Ors. ..Petitioners.

Versus

The Assistant Registrar Co-op.Societies
Pune Zillha Nagari Sahakari Banks ..Respondents.
Association Ltd., & Ors.

Mr. R.V.Govilkar for the Petitioners.
Mr. K.V. Tambe for the Respondent No.2.

CORAM : S. A. BOBDE, J.
DATED : 20TH OCTOBER, 2005.

P.C.:

1. The petitioners have challenge a recovery certificate dated 12.11.2002, certifying recovery of a sum of Rs.35,72,586/- from the petitioners. The petitioners have availed of the remedy provided by section 154 (2-A) of the Maharashtra Co-operative Societies Act,1960 and Revision No. 29/2005 is pending before the Divisional Joint Registrar at Pune.

2. Mr. Govilkar, the learned counsel for the petitioners submitted that the recovery certificate is vitiated on account of the fact that it is on the basis of substituted service and does not demonstrate that any attempt was made to serve the petitioners

before it was issued.

3. The second contention raised on behalf of the petitioners is that the opening balance shows an amount of Rs.23 lakhs as having been debited in the account of the petitioners, therefore, a certificate for a larger amount could not be shown as recoverable. According to the learned counsel the balance amount of approximately Rs.Twelve lakhs was never disbursed to the petitioners and not availed of by the petitioners.

4. Though a notice has not been issued in this writ petition, Mr. Tembe, the learned counsel, has appeared on behalf of the Respondent No.2, upon service by the petitioners, and submitted that the petitioners had availed of a sum of Rs. 12 lakhs, as is evident from the voucher in the possession of the Bank.

5. Having regard to the dispute on facts and having regard to the fact that the petitioners have already availed of remedy provided under section 154 of the Act, I am not inclined to interfere in this petition in exercise of extra -ordinary jurisdiction of this court on this ground alone.

6. The petitioners are indeed entitled to raise

all the contentions they have raised before this court in revision and have a remedy which they have already availed off. It appears that the petitioners have approached this court only in order to avoid the requirement of section 154 (2A) of the Act, which requires a person, to avail of the remedy under this section, to deposit 50% of the amount of recoverable dues. Hence, the petition is dismissed.

DT. 20.10.05 (S.A.BOBDE,J)

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